

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JOHN WALKER, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

BURGERFI INTERNATIONAL, INC. f/k/a
OPES ACQUISITION CORP., JULIO
RAMIREZ, IAN H. BAINES, BRYAN
MCGUIRE, MICHAEL RABINOVITCH,
and OPHIR STERNBERG,

Defendants.

Case No. 0:23-cv-60657-AHS

JOSEPH PAOLINO, Individually and on
Behalf of all others similarly situated,

Plaintiff,

v.

BURGERFI INTERNATIONAL, INC. f/k/a
OPES ACQUISITION CORP., JULIO
RAMIREZ, IAN H. BAINES, BRYAN
MCGUIRE, MICHAEL RABINOVITCH, and
OPHIR STERNBERG,

Defendants.

Case No. 0:23-cv-61058-AHS

**DEFENDANTS' RESPONSE TO MOTIONS
FOR CONSOLIDATION, APPOINTMENT AS LEAD
PLAINTIFF, AND APPROVAL OF SELECTION OF COUNSEL**

Defendants, BurgerFi International, Inc. f/k/a Opes Acquisition Corp. ("BurgerFi"), Julio Ramirez, Ian H. Baines, Bryan McGuire, Michael Rabinovitch, and Ophir Sternberg (collectively, "Defendants"), by undersigned counsel, respectfully submit the following response to: 1) Ronnie

McGinley's Notice of Motion for Consolidation of Related Actions, Appointment as Lead Plaintiff, and Approval of Counsel (ECF Nos. 19-20); 2) Plaintiff John Walker's Motion and Incorporated Memorandum of Law in Support of Motion for Consolidation, Appointment as Lead Plaintiff, and Approval of Selection of Counsel (ECF No. 21); 3) Plaintiff Joseph Paolino's Motion and Memorandum of Law in Support of the Motion to Consolidate Related Actions, Appoint Lead Plaintiff, and Approve Selection of Lead Counsel (ECF No. 22); and 4) Plaintiffs' Stipulation for Consolidation of Related Actions, Appointment as Co-Lead Plaintiffs, and Approval of Selection of Co-Lead Counsel (ECF No. 25), and state:

1. On June 5, 2023, Ronnie McGinley, a purported BurgerFi shareholder, filed a Notice of Motion for Consolidation of Related Actions, Appointment as Lead Plaintiff, and Approval of Counsel, seeking consolidation of the Actions and to be appointed lead plaintiff in this action, and requesting the approval of his selection of lead counsel. ECF Nos. 19-20.

2. Later that day, Plaintiff John Walker filed a Motion and Incorporated Memorandum of Law in Support of Motion for Consolidation, Appointment as Lead Plaintiff, and Approval of Selection of Counsel, seeking consolidation of this action with another related action (the "Actions"), to be appointed lead plaintiff in this action, and approval of his selection of co-lead counsel. ECF No. 21. Walker opposed the selection of Joseph Paolino as lead plaintiff and his counsel as lead counsel. *Id.*

3. The same day, Joseph Paolino, another purported BurgerFi shareholder, filed a complaint in this Court, *Paolino v. BurgerFi International, Inc. f/k/a Opes Acquisition Corp., et al.*, No. 23-cv-61058 (the "*Paolino* Action"). *Paolino* Action, ECF No. 1.

4. Paolino also filed in this action a Motion and Memorandum of Law in Support of the Motion to: (1) Consolidate Related Actions; (2) Appoint Lead Plaintiff; and (3) Approve

Selection of Lead Counsel. ECF No. 22.

5. On June 20, 2023, Walker and Paolino (“Plaintiffs”) filed a Stipulation for Consolidation of Related Actions, Appointment as Co-Lead Plaintiffs, and Approval of Selection of Co-Lead Counsel (the “Stipulation”), asking the Court to: 1) consolidate the Actions as *In re BurgerFi International, Inc. Securities Litigation*, No. 23-cv-60657; 2) appoint them as Co-Lead Plaintiffs; and 3) approve their selection of Rosen Law and Pomerantz as Co-Lead Counsel and Silver Law as Liaison Counsel. ECF No. 25. McGinley did not oppose Plaintiffs’ requests. *Id.*

6. Defendants take no position with respect to the Court’s appointment of lead plaintiff(s) or the selection of lead counsel. However, Defendants dispute Plaintiffs’ contentions and allegations concerning Defendants’ alleged actions or omissions, as well as any alleged losses. Defendants reserve the right to: (i) object to any Plaintiff’s standing to assert claims against them in this action; (ii) object to, and move to dismiss on any available grounds, all claims against them in connection with Plaintiffs’ contentions; and (iii) object on all available grounds to any motion for class certification.

7. Any evaluation of the typicality and adequacy of proposed lead plaintiffs at this early stage of these proceedings will be preliminary. *See, e.g., Gonzalez v. Cano Health, Inc.*, No. 22-cv-20827, 2022 WL 18832150, at *3 (S.D. Fla. Dec. 22, 2022) (citing *Luczak v. Nat’l Beverage Corp.*, No. 18-cv-61631, 2018 WL 9847842, at *2 (S.D. Fla. Oct. 12, 2018)) (lead plaintiff needs to make only “a sufficient preliminary showing” that he satisfies typicality and adequacy requirements of Federal Rule of Civil Procedure 23); *Mulvaney v. Geo Grp., Inc.*, No. 16-cv-81494, 2016 WL 10519276, at *2 (S.D. Fla. Nov. 21, 2016) (“[A]t the lead plaintiff selection stage, all that is required is a preliminary showing that the lead plaintiff’s claims are typical and adequate.”); *see also In re Jan. 2021 Short Squeeze Trading Litig.*, No. 21-cv-2989, 2021 WL

4840857, at *3 (S.D. Fla. Oct. 15, 2021) (citing *Miller v. Dyadic Int’l, Inc.*, No. 07-cv-80948, 2008 WL 2465286, at *6 (S.D. Fla. Apr. 18, 2008)) (“Of [Rule 23’s] prerequisites, only two—typicality and adequacy—are relevant in deciding a motion for appointment of lead plaintiff.”).

8. Defendants therefore respectfully request that any order appointing lead plaintiff(s) or approving lead plaintiffs’ selection of counsel provide that any determinations made in connection with such an appointment and approval are preliminary and limited to the lead plaintiff selection process under the PSLRA.

Dated: June 26, 2023

Respectfully submitted,

/s/ Allison Kernisky

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Ian H. Baines, Bryan McGuire, Michael
Rabinovitch, and Ophir Sternberg*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 26, 2023, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Allison Kernisky

Allison Kernisky